

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

CIVIL APPLICATION NO.1301 OF 2004

IN

APPEAL FROM ORDER NO.844 OF 2002

IN

NOTICE OF MOTION NO.39 OF 2002

IN

S.C.SUIT NO.5038 OF 2001

Bhupendra Maganlal Shah).. Appellant

Versus

Bharat s/o Kevalchand Solanki).. Respondent

Mr.S.P.Dubey for the Appellant.

Mr.A.Y.Sakhare with Mr.S.K.Dubey for the
Respondent/Applicant.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 25TH JANUARY 2005

P.C.:

. This Civil Application has been filed by the Respondent mainly for recalling the order dated 5th October 2004 by which the Appeal From Order has been decided. The explanation given is that the Clerk of the Advocate missed the matter and, therefore, the Respondent could not remain present. Without going into the merits of the Civil Application, which details the incidents which occurred after my order, I am of the view that negligence of a Clerk of the Advocate should not jeopardise the interest of the Respondent. However,

since the matter appeared on two dates in October 2004, the order dated 5th October 2004 is recalled on condition of payment of costs quantified at Rs.5000/- (Rupees Five Thousand only). The costs shall be paid within one week to the Advocate for the Appellant.

2. After my order dated 5th October 2004, the Appellant is now in possession of the suit premises and, therefore, will remain in possession till the Appeal From Order is decided afresh.

3. Civil Application disposed of accordingly.